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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/922,888	08/06/2001	Wolfgang Biesel	2565/89	9046
26646	7590	04/21/2004	EXAMINER	
KENYON & KENYON ONE BROADWAY NEW YORK, NY 10004			KIM, SUN U	
			ART UNIT	PAPER NUMBER
			1723	
DATE MAILED: 04/21/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 09/922,888	Applicant(s) BIESEL, WOLFGANG	
	Examiner John Kim	Art Unit 1723	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 12 February 2004.  
 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.  
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 11-25 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) ☒ Claim(s) 14-18 and 23-25 is/are allowed.  
 6) ☒ Claim(s) 11-13 and 19-22 is/are rejected.  
 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
 10) ☒ The drawing(s) filed on 06 August 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☒ All    b) ☐ Some \*    c) ☐ None of:  
         1. ☐ Certified copies of the priority documents have been received.  
         2. ☒ Certified copies of the priority documents have been received in Application No. 09/235,964.  
         3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
     \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

Art Unit: 1723

1. Claims 11-13 and 19-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 3,655,123 (hereinafter referred to as Judson et al). Judson et al teach a blood centrifugation device comprising a centrifuge (52) having a blood suspension inlet (90), a waste line and a concentrated cell outlet line with a concentrated cell pump (66) and a diluting device (76) in fluid connection with the concentrated cell outlet line via a plasma outlet line from centrifuge (52) for delivering plasma e.g. physiologic solution via a plasma pump (70) wherein plasma combines with the concentrated red blood cells downstream of the concentrated cell pump (66) at point R to inherently dilute concentrated red blood cells because plasma is of a lighter fluid than red blood cells (see figure 1; col. 7, line 29 - col. 10, line 57)(claims 11-13, 20). Blood suspension inlet line is controlled by a blood pump (62) (see col. 20, lines 29-38; col. 21, lines 36-68). Concentrated red blood cell pump (66) is controlled by red blood cell pump control (706) (see figure 18; col. 27, lines 12-23). Regarding claims 21-22, the recitations that the device processes cell suspensions collected intraoperatively or post-operatively are an intended use and these recitations are not given patentable weight in the apparatus claims. Regarding claim 19, Judson et al teach a separation unit having separation channels (see figures 5-11; col. 14, line 10 - col. 17, line 52). Claims 11-13 and 20-22 essentially differ from the apparatus of Judson et al in reciting that the solution line is connected to the concentrated cell outlet line upstream of the concentrated cell pump instead of downstream of the concentrated cell pump. The plasma can be combined with concentrated cells anywhere along the concentrated cell outlet line to reconstitute blood to be returned to the donor. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to provide a solution line connected to the concentrated cell outlet line upstream of the concentrated cell outlet pump to recombine

Art Unit: 1723

blood components e.g. plasma and concentrated blood cells to form reconstituted blood to be returned to the donor. Claim 19 essentially differs from the apparatus of Judson et al in reciting that the separation unit has a shape selected from the group consisting of a ring or a spiral. It would have been an obvious matter of design choice to modify the separation unit in a shape of ring or spiral, since applicant has not disclosed that the separation unit in a shape of ring or spiral solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with any other shape such as square or diamond or bowl.

2. Claims 14-18 and 23-25 are allowed.
3. Applicant's arguments with respect to claims 11-25 have been considered but are moot in view of the new ground(s) of rejection.
4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

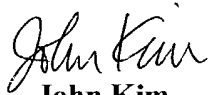
Art Unit: 1723

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Kim whose telephone number is (571) 272-1142. The examiner can normally be reached on weekdays from 7:00 AM - 3:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda Walker, can be reached on (571) 272-1151. The fax phone number for official response is (703) 872-9306.

When sending a draft amendment by fax, please mark the paper as "DRAFT"; otherwise, mark the paper "OFFICIAL". This will expedite the processing of the paper.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0651.

  
**John Kim**  
**Primary Examiner**  
**Art Unit 1723**

J. Kim  
April 16, 2004